CBO COST ESTIMATE

Mr. SHELBY. Mr. President, I ask unanimous consent that the Congressional Budget Office cost estimate for S. 498, the Joseph A. De Laine Congressional Gold Medal bill, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 19, 2003.

Hon. RICHARD C. SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed estimate for S. 498, a bill to authorize the President to posthumously award a gold medal on behalf of Congress to Joseph A. De Laine in recognition of his contributions to the nation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure

S. 498—A bill to authorize the President to posthumously award a gold medal on behalf of Congress to Joseph A. De Laine in recognition of his contributions to the nation

S. 709 would authorize the President to award posthumously a gold medal to Joseph De Laine Jr. to honor Reverend Joseph Anthony De Laine on behalf of the Congress for his civil rights contributions to the nation. The legislation would authorize the U.S. Mint to spend up to $30,000 to produce the gold medal. To help recover the costs of the medal, S. 498 would authorize the Mint to strike and sell bronze duplicates of the medal at a price that covers production costs for both the medal and the duplicates.

Based on the costs of recent medals produced by the Mint, CBO estimates that the bill would not significantly increase direct spending from the U.S. Mint Public Enterprise Fund. We estimate that the gold medal would cost about $25,000 to produce in fiscal years 2003 and 2004, including around $5,000 for the cost of the gold and around $20,000 for the costs to design, engrave, and manufacture the medal. CBO expects that the Mint would recoup little of its costs by selling bronze duplicates to the public.

S. 498 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

TRIBUTE TO JANINE LOUISE JOHNSON

Mr. HARKIN. Mr. President, it is with great sadness that I pay tribute to Janine Johnson, who for over 12 years served the Senate, its Members and staff as an assistant counsel in the Office of Legislative Counsel. Janine died on May 29, 2003 at the far too young age of 37.

In reality, there is little my words can add to the memorial Janine herself built through her outstanding legal skills, extraordinary dedication and uncommon kindness and personal grace. She will be remembered for her positive impact on the laws she helped so much to enact and for the example and fond memories she has left her colleagues and friends.

Janine came to work in the Senate Office of Legislative Counsel with an already full set of accomplishments: first in her high school class of 333 in Winchester, Massachusetts; National Merit Scholar; cum laude graduate of both Harvard College and Harvard Law School; a federal circuit court clerkship with Judge Cecil F. Poole on the United States Court of Appeals for the Ninth Circuit; member of the Massachusetts Bar.

We are fortunate that Janine built on that record by bringing her excellent qualifications and talent to the Senate. Beginning in February of 1991, she drafted many bills and amendments for committees and individual members and their staffs. Her work, which was primarily in the areas of the environment, public works, agriculture, nutrition and natural resources, contributed to a long list of enacted legislation.

In addition to numerous environmental and public works laws, including the Water Resources Development Acts of 1996 and 2000, and the Transportation Equity Act for the 21st Century of 1998, Janine contributed greatly to writing the Federal Agriculture Improvement and Reform Act of 1996 and the Farm Security and Rural Investment Act of 2002. And though her efforts helped better our Nation, and even other parts of the world, only a very few people have any idea or appreciation of Janine's work.

That is just the way Janine would have it. She was a private person who did not seek the limelight. Instead, she quietly went about doing excellent work as the consummate professional she was. She was meticulous, detail-oriented and precise, as one would want someone drafting important legislation to be, with an uncanny ability to take concepts and ideas and shape them into exact language carefully crafted to fit into the federal statutory scheme. To cite an example, Janine was the lead legislative counsel in drafting the nutrition title of the 2002 farm bill. Especially in a bill as extensive and complex as the farm bill, it is the rule that drafting errors are to be expected. To this day, not one error has been found in the drafting of the 2002 farm bill's nutrition title.

Janine willingly put in the extra hours so often required to produce such high-quality work while meeting the demanding time constraints of the legislative process. She was a very patient and stabilizing force in what are frequently pressurized circumstances—someone who also took pride in cultivating and maintaining good relations with both sides of the aisle and all sides of the various issues she worked on.

In short, Janine Johnson exemplified the fine professional qualities that are characteristic of the Senate Office of Legislative Counsel. She distinguished herself by setting a high standard within an office known for its high standards.

Janine's death is a terrible loss, and yet as we consider her very substantial and lasting accomplishments and contributions—and more importantly the memories of her that live on—it is fitting to recall the words of John Donne:

Death be not proud, though some have called thee
Mighty and dreadfull, for, thou art not so,
For, those, whom thou think'st, thou dost overthrow,
Die not, poore death, nor yet canst thou kill me.

I offer my condolences and kind wishes to Janine's family, friends and colleagues as they mourn her passing.

CREATING AN ASSISTANT SECRETARY FOR MANUFACTURING IN THE DEPARTMENT OF COMMERCE

Mr. VOINOVICH. Mr. President, I rise today to ask my colleagues' support for legislation I have introduced creating the new position of Assistant Secretary for Manufacturing in the Department of Commerce.

In America we are blessed with ingenuity, gumption, and a can-do spirit that is recognized around the world. At the turn of the last century we helped lead the world into the Industrial age. American inventors gave electricity and air travel to the world.

As we enter the 21st century, American manufacturing has as much potential as it has ever had at any time in our Nation's history. Accomplishments in the high-tech industry have been rapidly integrated into manufacturing to make our factories and our workers more productive, reduce costs, and save time.

At the same time, substantial new trade, training, energy, labor, and foreign competition challenges have arisen. Helping our manufacturing interests deal with these challenges is something that private sector organizations such as the National Association Manufacturers have done well for years. It only stands to reason that we focus resources in the Government sector in support of manufacturing as well.

I am concerned about the slow economic recovery and our Nation's declining position in the global marketplace, particularly for manufacturing, which is the backbone of our economy, both in Ohio and the Nation. There is a genuine panic by the manufacturing community over their future and the jobs created from manufacturing. They feel they are under siege from environmental regulations, rising health care costs, litigation, escalating natural gas costs, and the prospect of dramatically higher electricity costs if energy reform legislation is not passed.

First, health care costs continue to rise. Nationwide, we have seen double-digit increases in health care premiums over the last 2 years alone. In

Ohio, the business community tells me they are seeing 20 to 50 percent increases in their health care costs. These increases raise labor costs, decreasing capital that otherwise would be available to make investments, and, ultimately, negatively impact our global competitiveness. In addition, these costs are being passed on to employees, limiting their take-home pay and increasing the number of uninsured.

Second, high natural gas prices are also having a detrimental effect on industry in Ohio and across the Nation. Many industries cannot compete internationally because of these high prices. Over the last 10 years, the average price for natural gas has been less than $3.00 per million cubic feet (Mcf). This year, companies in Ohio have been paying almost $10.00 per Mcf, more than a threefold increase. These price spikes are felt the hardest by Ohio's agriculture, chemical, and manufacturing industries. In order to be competitive, we cannot afford to hamper American companies in this manner.

Additionally, I have heard from companies in both the manufacturing and the chemical sectors that they cannot survive with these high prices. In particular, two chemical companies in Ohio have informed me that they are considering moving their operations not only out of Ohio, but outside of the United States because of these high costs. At the same time, suppliers of these companies are considering temporary shutdowns because they cannot afford to operate. Ohio's companies have not been able to budget and plan sufficiently because these prices have been so unpredictable this year.

As natural gas prices continue to rise, the President's National Energy Policy Task Force projects that over 1,300 new power plants will need to be built to satisfy America's energy needs over the next 20 years. As a result of the emissions limits and regulatory uncertainty triggered by the Clean Air Act, the Department of Energy currently predicts that over 90 percent of these new plants will be powered by natural gas. Further, analysis by EIA and the EPA shows that a large percentage of coal-fired plants are likely to be replaced by natural gas-fired plants in the near future.

Third, manufacturers need reliable transportation infrastructure to bring in supplies and ship out their products. We are a ''just in time'' economy and we are falling behind in our national investment in highways and bridges. According to the U.S. Department of Transportation, for each $1 billion of Federal spending on highway construction, 47,500 jobs are created annually. Furthermore, the Department estimates that every dollar invested in our highways yields $5.70 in economic benefits due to reduced delays, improved safety and reduced vehicle operating cost. Clearly, transportation investment in needed ''ready-to-go'' projects could go a long way in getting the economy back on track.

Finally, manufacturing companies are distressed by the surge in foreign competition, particularly from China. As a matter of fact, if a vote were taken today among Ohio manufacturers, many would oppose normal trade relations with China.

These are only a few of the challenges facing American manufacturers. Their profitability and survivability is impacted by virtually every policy and/or agency within the Federal Government. Moreover, the fact that there has been limited coordination of Government policies and agencies that impact manufacturing has contributed to a prolonged, steady decline of what I believe is the most critical sector of our economy.

According to USA Today, U.S. manufacturers laid off 95,000 workers in April—the 33rd consecutive month of decline and the largest drop in 15 months. Since July 2000, manufacturing has lost 2.6 million jobs. My own State of Ohio has lost 154,500 manufacturing jobs, over a 15-percent decline. New orders for manufactured goods in April decreased by $9.4 billion, or 2.9 percent, to $320 billion. This was the largest percent decline since November 2001. Shipments decreased by $7.1 billion or 2.2 percent to $320.6 billion. This was the largest percent decline since February 2002.

According to the National Association of Manufacturers, ''If the U.S. manufacturing base continues to shrink at its present rate and the critical mass is lost, the manufacturing innovation process will shift to other global centers. Once that happens, a decline in U.S. living standards in the future is virtually assured.''

Unfortunately, up to now, there has been no senior level policymaker responsible for examining prospective and existing Government policies to determine their potential impact on manufacturing. This is more than an unfortunate oversight; it is a potential economic disaster. Government policies are often developed without regard to their impact on manufacturing. Too many Government decisionmakers view manufacturing as a ''dying sector'' that is better transferred overseas so Americans can focus on the more profitable service sector. What these people fail to realize is that manufacturing is the foundation of the service sector.

There is no retail industry without manufactured products to sell. There is no transportation industry without manufactured products to transport. There is no repair industry without manufactured products to repair. Even services such as accounting, financial management, banking, and information technology sell their services to manufacturers and could not remain profitable without a vibrant manufacturing sector.

Manufacturing growth spawns more additional economic activity and jobs than any other economic sector. Every $1 of final demand for manufactured goods generates an additional 67 cents in other manufactured products, and 76 cents in products and services from nonmanufacturing sectors.

In fact, manufacturers are responsible for almost two-thirds of all private sector Research & Development—$127 billion in 2002. In addition, spillovers from R&D benefit other manufacturing and nonmanufacturing firms.

Manufacturing productivity gains are historically higher than those of any other economic sector. For example, over the past two decades, manufacturing averaged twice the annual productivity gains of the rest of the private sector. These gains enable Americans to do more with less, increase our ability to compete, and facilitate higher wages for all employees.

Manufacturing salaries and benefits average $54,000, which is higher than the average for the total private sector. Two factors in particular attract workers to manufacturing: one, higher pay and benefits, and, two, opportunities for advanced education and training.

Manufacturing has been an important contributor to regional economic growth and tax receipts at all levels of government. During the 1990s, manufacturing corporations paid 30 to 34 percent of all corporate taxes collected by State and local governments, as well as Social Security and payroll taxes, excise taxes, import and tariff duties, environmental taxes and license taxes.

Furthermore, manufacturing is a secure foundation for future economic prosperity. Capital investments in factories and equipment tend to anchor businesses more securely to a community, a State or a nation. When a corporation owns property in a community, they are more likely to be an active participant in helping improve the quality of life, stability, and economic vitality of that community.

Our competitors recognize this and are moving rapidly to claim the manufacturing preeminence that once characterized the U.S. economy. While America's industrial leadership is being squeezed by rising health care costs, runaway litigation, excessive regulation and some of the highest taxes on investment in the industrialized world, our foreign competitors are taking a larger market share with less expensive products that make it difficult to raise prices. The result is a dramatic decline in manufacturing cashflow that forces firms to cut back on R&D and capital investment, and to reduce employment. The U.S. manufacturing base is receding—and with it the all-important innovation that is the seedbed of our industrial strength and competitive edge.

Unfortunately, while many countries support their manufacturing sector with favorable government policies, tax incentives, and even financial subsidies, the United States does not even coordinate government initiatives that

might impact our own manufacturers. Within the U.S. Government, however, we do have Cabinet level Departments to represent the interests of agriculture, transportation, and energy. These three sectors combined do not generate as much economic activity, nor employ as many individuals as manufacturing. Nevertheless, there is no senior level policymaker anywhere in the Federal Government whose sole responsibility is the health and growth of manufacturing. Is it any wonder we are losing market share to foreign competition?

The bill I am introducing today will help rectify this unfortunate situation. It will establish an Assistant Secretary in the Commerce Department who will: one, represent and advocate for the interests of the manufacturing sector; two, aid in the development of policies that promote the expansion of the manufacturing sector; three, review policies that may adversely impact the manufacturing sector; and, four, assist the manufacturing sector in other ways as the Secretary of Commerce shall prescribe.

The new Assistant Secretary of Commerce for Manufacturing will also submit to Congress an annual report that contains: one, an overview of the state of the manufacturing sector in the United States; two, forecast of the future state of the manufacturing sector in the United States; and, three, an analysis of current and significant laws, regulations, and policies that adversely impact the manufacturing sector in the United States.

It is a small step forward but an important one. I look forward to working with my colleagues to enact this important legislation.

CONTROL OF STATE AND LOCAL POLITICAL INSTITUTIONS

Mr. ALEXANDER. Mr. President, I recently had the opportunity to read a book cowritten by a friend and law school classmate of mine, Professor Ross Sandler. The book, ''Democracy by Decree,'' cowritten by Professor David Schoenbrod, is a fascinating discussion of an issue that has bedeviled our democracy since the 1960's: the control of State and local political institutions by the Federal courts.

When I served as Governor of Tennessee, I had the opportunity to attend many meetings with my fellow Governors. I learned that at that time, the prisons in virtually every State were under the control not of the Governor but of the Federal courts, whose decrees governed almost all aspects of prison management. Many of these decrees had lasted for years and years, and most would continue in force past the time I left the Governor's mansion.

Under our Federal system, the enforcement of criminal laws had been left to the States. With all of these decrees in force, however, instead of elected officials controlling a central aspect of law enforcement, a small group of lawyers and judges in each State could and would dictate penal policy by controlling the decrees. Nearly all these cases started out with the salutary purpose of protecting the constitutional rights of prison inmates to be free of prison brutality. They ended up going much further than the Constitution required or even permitted. Federal judges in some States were deciding how hot the coffee had to be in the prison commissary or how often the windows had to be washed. Judicial decrees of this nature had lasted so long that no one quite knew how to terminate them, and prison officials even got used to them. Not only had prison officials become comfortable with judicial management, they sometimes even colluded with litigants to force elected officials to provide a greater percentage of government resources to the penal system, even when the Constitution did not so require.

When the situation of judicial abuse over the management of prisons came to the attention of Congress, this body responded effectively by enacting the Prison Litigation Reform Act, codified at section 3626 of title 18 of the U.S. Code. This law, largely developed by Chairman HATCH, Senator SPECTER, former Senator Abraham, and others, limits the period of time Federal judges could impose decrees managing State and local prisons. Under the act, a judicial decree governing prison conditions cannot remain in effect for more than 2 years, unless the issuing court reviews the conditions at the prison and affirmatively determines that the decree is still needed to remedy a current violation of law or the Constitution. The burden of proving the need for the continuation of the decree remains, as in the original suit, with the plaintiffs. The 2-year time limit applies equally to consent decrees and to decrees entered after trial.

I believe the Prison Litigation Reform Act has been effective at restoring control of State and local penal facilities to the democratic branches of the States. According to Professor Sandler, many of the 20 and 25-year-old decrees governing prison conditions have been terminated or modified. This very fact demonstrates that the constitutional shortcomings that had initially prompted many of the lawsuits had been fixed, but there was no effective mechanism for allowing political actors to resume control over these institutions. At the same time, however, there has been no evident impact on the ability of the Federal courts to protect prison inmates from current or ongoing violations of the law or the Constitution.

What the Prison Litigation Reform Act accomplished so successfully and in a carefully balanced way should serve as a model for Congress to emulate in other areas of Federal law. Federal courts, prodded by activists and plaintiffs' lawyers, have taken control through negotiated consent decrees of multiple State and local social programs. The same problems that bedeviled Governors, State legislators, and prison administrators before the Prison Litigation Reform Act now confronts those democratically responsible actors who seek to manage foster care, special education, mental health services, Food Stamps, and welfare programs. In many States and local communities, any number of these programs is under direct judicial supervision. As was the case with prison decrees, many of the orders governing these myriad social programs have been in place for many years, binding elected officials to obligations imposed for a different set of circumstances, with no requirement that the court review the underlying facts to determine if continued judicial oversight is warranted or appropriate.

As a former law clerk to one of this Nation's most eminent Federal judges, I know that judicial oversight can often be a crucial tool, sometimes the only tool, with which to vindicate people's constitutional or legal rights. I know that Federal judges did not seek to usurp the prerogatives of Governors, mayors, and legislators. Over time and often incrementally, however, they did so.

Judges, in fact, were and are often reluctant to intrude into the operations of government programs. When they seek to encourage a negotiated resolution, however, they empower plaintiffs' lawyers and government lawyers to negotiate and decide the outcome. Often, the parties to the negotiation find that they can make common cause, particularly in finding non-democratic means for improving programs and prying more money and authority from Governors, mayors, and legislators. Working behind closed doors, and unaccountable to the people, the lawyers and the activists negotiate elaborate decrees of hundreds of pages, often encrusted with horse trades that often have little or nothing to do with the law or the alleged violations but a lot to do with long-term agendas of the parties to the negotiations. Only a small cadre of people is involved behind these closed doors. And at the end of the process, these self-interested negotiators present the judge with a decree that reflects the ''consent'' of all parties but bypasses the democratic process. These decrees are put into effect, and often no one ever reviews whether the legal bases on which they may be founded remain viable. Instead, they remain in effect for years and years, tying the hands of elected officials, even if there is no violation of law to remedy.

Building on the proven model of the Prison Litigation Reform Act, Congress can and should limit the harm that institutional reform decrees do to local democracy without precluding judges from vindicating legal and constitutional rights when necessary. Congress ought to consider legislation in different areas to limit judicial decrees in institutional reform cases to correcting only actually proven systemic